

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

MFA.No. 1318 of 2001(C)

**OPMV.497/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
KOTTAYAM**

APPELLANT/2ND RESPONDENT:

**NATIONAL INSURANCE COMPANY LTD.,CHANGANASSERY,
REP. BY THE ASST. ADMINISTRATIVE OFFICER, MTPC,
REGIONAL OFFICE ANNEXE, KOCHI.**

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/PETITIONER AND R1:

**1.K.U.RAJU,S/O.ULAHANNAN,KUPPEKUNNEL HOUSE,
MEENADOM KARA AND VILLAGE, KOTTAYAM DISTRICT.**

**2.T.K.THULASIDAS,S/O.T.N.KUTTAPPAN NAIR,
KAKKANATTU KUNNEL HOUSE, MEENADOM POST,
KOTTAYAM DISTRICT.**

BY ADV. SMT.K.G.SAROJINI FOR R2

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1318 OF 2001 ()

Dated this the 6th day of July, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed by the Insurance company. The 1st respondent filed an application for compensation contending that she sustained severe injuries due to the negligence of the driver of the autorickshaw insured by the appellant Insurance company. Tribunal assessed the compensation of Rs.91,600/- with interest and costs. A definite contention was taken by the appellant before the tribunal that the claimant was a passenger in a goods vehicle and hence Insurance company is liable to pay the compensation.

2. The accident occurred on 12.12.1991 before the amendment of the Motor Vehicles Act 1988 by Act No.54 of 1994. In **New India Assurance Co. Ltd. v. Satpal Singh (2000 (1) SCC 237)** it was held that all passengers whether travelling in goods vehicle or passenger vehicle are entitled to compensation. But the above decision was overruled in **New**

India Insurance Co. Ltd. v. Asha Rani and others ((2003) 2 SCC 223). In **National Insurance Co. Ltd. v. Baljit Kaur and others (2004 AIR SC 1340)** it was held that since accident occurred prior to the decision in Asharani's case, Insurance company can be directed to pay and recover the amount from the insured. Same was the decision in **Oriental Insurance Co. Ltd. v. Nanjappa and others (AIR 2004 SC 1630)**. Supreme Court also held that owner of the goods and his authorised representatives are covered only with effect from 14.11.1994 after the amendment of the Motor Vehicles Act, 1988 by Act No.54 of 1994. (See in **Pramod Kumar Agrawal Kaur v. Mushtari Begum & others ((2004) 8 SCC 667)**). In these circumstances, since the award was passed at the time when Satpal's case (supra) was in force, Insurance company is directed to deposit the amount and appellant is given the liberty to recover the amount from the insured in execution of the award. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1318 OF 2001 ()

J U D G M E N T

6th July, 2007